

Attorneys for Plaintiffs

KATHY LEECH, *et al.*,

No. C 08-01255-SC

Plaintiffs,

vs.

TODD SHIPYARDS CORPORATION,

Defendant.

JOINT MOTION AND STIPULATION TO
STAY PROCEEDING OR, IN THE
ALTERNATIVE, TO CONTINUE CASE
MANAGEMENT DEADLINE AND
CONFERENCE, AND TO EXTEND TIME;
[PROPOSED] ORDER TO STAY;
[PROPOSED ALTERNATIVE] ORDER
TO CONTINUE

Pursuant to Civil L. R. 7-11 and 7-12, the following parties hereby stipulate to, and respectfully move the Court for, an Order staying this action, or in the alternative continuing case management deadlines, for the following good cause:

On March 31, 2008, Defendant TODD SHIPYARDS CORPORATION filed a Notice to Tag Along Action regarding the pending Multidistrict Litigation (“MDL”) in the Eastern District of Pennsylvania, seeking among other things, to move Jurisdiction of this matter to that District. Defendant TODD SHIPYARDS CORPORATION confirms that said notice was transmitted by Defendant to the Judicial Panel on Multidistrict Litigation (“JPML”) in Washington, D.C.

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1 On July 29, 1991, the JPML entered an order transferring all asbestos personal injury
2 cases pending in the federal courts to the United States District Court for the Eastern District of
3 Pennsylvania, for coordinated pretrial proceedings pursuant to 28 U.S.C. § 1407. (*In re Asbestos*
4 *Products Liability Litigation* (no. VI). MDL No. 875., 771 F.Supp. 415 (1991)). That order also
5 applies to “tag-along actions,” or actions involving common questions of fact filed after January
6 17, 1991. Such actions are to be transferred to the eastern District of Pennsylvania as part of
7 MDL 875, for coordinated pretrial proceedings.

8 The JPML has held that a district court has the authority to stay pending a transfer order.
9 *In re Asbestos Products Liability Litigation*, 170 F. Supp. 2d 1348, 1349 n.1 (J.P.M.L. 2001)
10 (“[T]hose courts concluding that such issues should be addressed by the transferee judge need
11 not rule on them, and the process of 1407 transfer in MDL-875 can continue without any
12 unnecessary interruption or delay.”)

13 The parties agree that it is likely that the JPML will transfer this matter to the Eastern
14 District of Pennsylvania. The Clerk of the JPML has not entered a *Conditional Transfer Order*
15 pursuant to JPML Rule 12(a) or filed an order to show cause why the action should not be
16 transferred, pursuant to JPML Rule 13(b). It is likely the dates set forth in the *Case Management*
17 *Scheduling Order* including the deadlines imposed by Federal Rules of Civil Procedure, Rule
18 26, will pass before the Clerk of the JPML acts.

19 The parties make this Motion on the grounds that a stay of this action would (a) promote
20 judicial efficiency, (b) allow consistency in pretrial rulings, and (c) be most convenient to the
21 parties.

22 For the reasons above, the parties hereby STIPULATE to and respectfully request the
23 Court VACATE its *Case Management Scheduling Order* and that the Court issue an Order
24 STAYING this action pending the outcome of the MDL Panel’s decision on the merits of the
25 transfer.

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1 In the alternative, the parties hereby STIPULATE to and respectfully request that this
2 Court vacate and continue the dates set forth in the *Case Management Scheduling Order* pending
3 the outcome of the JPML's decision on the merits of the transfer.

4 Dated: April 9, 2008

BRAYTON ♦ PURCELL LLP

/s/ David R. Donadio

6 By: _____
7 David R. Donadio
8 Attorneys for Plaintiffs

9 Dated: April 8, 2008

YARON & ASSOCIATES

/s/ George D. Yaron

10 By: _____
11 George D. Yaron
12 Attorneys for Defendant TODD
13 SHIPYARDS CORPORATION
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1 [PROPOSED] **ORDER TO STAY**

2 IT IS HEREBY ORDERED that the hearing date and deadlines specified in the *Case*
3 *Management Scheduling Order* dated March 3, 2008, are hereby VACATED and that this action
4 is STAYED pending the outcome of the JPML's decision on the merits of the transfer.

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6 Dated: _____

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8 Samuel Conti
United States District Court Judge
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10 [PROPOSED *ALTERNATIVE*] **ORDER TO CONTINUE**

11 IT IS HEREBY ORDERED that the hearing date and deadlines specified in the Court's
12 Case Management Scheduling Orders are hereby VACATED.

13 IT IS FURTHER ORDERED that the following case management deadlines are
14 continued as follows:

15 1. The Case Management Conference is set for [a date after September 1, 2008 to
16 wit:] _____, 2008; at _____ .m., Courtroom _____, _____th Floor, 450
17 Golden Gate Avenue, San Francisco, California.

18 2. Last day to meet and confer regarding initial disclosures, early settlement, ADR
19 process selection, and discovery plan is set for 21 days before the Case Management Conference
20 as set forth in paragraph 1, above.

21 3. Last day to file Joint ADR Certification with Stipulation to ADR Process or
22 Notice of Need for ADR Phone Conference is set for 21 days before the Case Management
23 Conference as set forth in paragraph 1, above.

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